

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 21**

**GREEN FARMS, INC., d/b/a  
WORLD WIDE PRODUCE<sup>1</sup>**

**Employer**

**and**

**Case 21-RC-20638**

**FOOD, INDUSTRIAL AND BEVERAGE  
WAREHOUSE, DRIVERS AND CLERICAL  
EMPLOYEES, LOCAL 630, affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, AFL-CIO<sup>2</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner seeks an election within a unit comprised of approximately 73 full-time and regular part-time employees employed by the Employer at its Los Angeles, California, facility. The Petitioner seeks to include in the unit the classifications of warehouse employees, receivers, pre-loaders, sorters, forklift drivers, and full-time drivers who work at or out of the Employer's facility. Contrary to the Petitioner, the Employer argues that any unit found appropriate must also include dispatchers, customer service employees, sales representatives, buyers, and part-time drivers, all of whom number approximately 23 additional employees. The following specific individuals are also in dispute: Ben Sierra, a salaried dispatcher; Laura Ramos, a customer service employee; Manuel Pacheco, a salaried receiver; Rene Barajas, a salaried warehouse employee; Carlos Mendez, a salaried full-time driver; and Andy Paez, a multi-functional employee. The Employer would include these employees in the unit on the basis of their shared community of interest with those in the petitioned-for unit. The Petitioner, in contrast, argues that these employees should be excluded from the unit because they are either statutory supervisors or managerial employees. The Petitioner agrees to participate in an election if an alternative unit is found appropriate.

For the reasons discussed below in detail, I conclude that the petitioned-for unit with the addition of part-time drivers is an appropriate unit. Based primarily on factors

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

such as differences in job functions, working time spent away from the warehouse, lack of contact with other employees, and differences in compensation, I conclude that sales representatives and customer service employees do not share a community of interest with those in the petitioned-for unit and should be excluded from the unit. Part-time drivers, however, regularly work for the Employer and do have a community of interest with those in the petitioned-for unit and should be included in the unit. I also conclude that buyers, who take discretionary action to implement the Employer's policies, should be considered managerial employees and thus be excluded from the unit. I further conclude that the dispatchers are statutory supervisors because they issue discipline and exercise independent judgment in the direction of employees' work activities and, therefore, should be excluded from the unit found appropriate herein.

Primarily because Ben Sierra is a dispatcher and performs the duties set forth above and Laura Ramos issues discipline and can effectively recommend termination of customer service employees, I find that they should be excluded from the unit as statutory supervisors. I conclude that Rene Barajas, Manuel Pacheco, and Carlos Mendez are not vested with either supervisory or managerial authority and, accordingly, should be included in the unit found appropriate herein. Finally, while I conclude that Andy Paez is also not vested with either supervisory or managerial authority, I find there is insufficient evidence in the record to determine whether he regularly performs a substantial amount of unit work. Accordingly, I shall direct that he be allowed to vote subject to challenge.

## DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. **Jurisdiction:** The parties stipulated, and I find, that the Employer is a California corporation engaged in the wholesale distribution of produce with offices and facilities in Los Angeles, California, and that during the 12-month period preceding the hearing, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of California. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.
3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:** The primary issue presented in this case is whether the unit sought by the Petitioner is appropriate for bargaining or whether it should include additional classifications urged by the Employer. In addition to this issue, the Petitioner contends that all buyers and the following employees are supervisors within the meaning of the Act and should be excluded from the bargaining unit: Laura Ramos, Andy Paez, Ben Sierra, Manuel Pacheco, Rene Barajas, and Carlos Mendez. The Employer contends that these employees and all buyers are not supervisors under the Act and should be included in the bargaining unit. I have concluded that the petitioned-for unit with the inclusion of all regular part-time drivers is appropriate. I have also concluded that Ben Sierra and Laura Ramos are supervisors, within the meaning of the Act. To present a context for my discussion of the issues raised, I shall examine the Employer's operations and the role that dispatchers play, survey the case law surrounding supervisory and managerial employees and community of interest, and set forth the basis for my conclusion that Sierra and Ramos are supervisors within the Act. There is no history of collective bargaining involving the employees in the petitioned-for unit.

#### **A. The Employer's Operations**

The Employer is a wholesaler of food items, mainly perishable products such as produce, dairy, and frozen foods. The Employer warehouses the food items at its Los Angeles, California facility and delivers them to restaurants and hotels mostly in the Los Angeles metropolitan area, but also to more distant locations such as San Diego and Bakersfield, California, and Las Vegas, Nevada. In December 2002, the Employer moved to its current facility, a new warehouse built to the Employer's specifications, located between Staunton Avenue and McGarry Street in Los Angeles. The facility operates 24 hours per day.

The Employer's warehouse measures approximately 33,000 square feet with refrigeration and frozen rooms on the first floor and offices on the first and second floors. Located on the warehouse's north side are two produce refrigerators, one dairy room, and one freezer as well as the tomato room. On the south side of the warehouse is the loading area where food items are loaded onto trucks for delivery. Offices on the first and second floors are located on the warehouse's west side. The manager's office, the dispatch office, the buyers' office, a warehouse office, and the kitchen and break room are located in the first-floor offices. On the second floor are the co-owners' offices; offices for clericals working in accounts payable, accounts receivable, and human resources; and one conference room. Customer service employees individually occupy 10 or 12 workstations divided by low cubicles on the second floor.

The Employer's business cycle begins with sales representatives, who procure new customers. The new customers then place orders with sales representatives or customer service employees. The sales representatives or customer service employees

input the orders into the computer system to generate pick tickets and invoices. The customer service employees give the pick tickets and the invoices to the dispatchers, who create drivers' routes and in turn give the pick tickets to the warehouse employees to fill the orders. The dispatchers also can access the pick tickets and invoices from a computer terminal on the first floor. If the products necessary to fill the orders are unavailable at the warehouse, the warehouse employees will so inform the dispatchers, who will consult with the buyers about the locations at which the products are available. The buyers or dispatchers then give the drivers a purchase order and send them to obtain the products from the Employer's suppliers and return with the products to the warehouse. If the products necessary to fill the orders are available at the warehouse, the warehouse employees—and sometimes the dispatchers or drivers themselves—load the trucks with the products. The warehouse employees or dispatchers give the pick tickets to the drivers, who verify that the correct quantities of the products are on their trucks and return the pick tickets to the dispatchers. The dispatchers then give the drivers the invoices, and the drivers depart to deliver the products. As the drivers complete their deliveries, the customers sign the invoices, keep one copy, and return one copy to the drivers. Once the drivers have finished their deliveries, they return to the warehouse to be checked in by receivers or dispatchers and provide the dispatchers with the copy of the signed invoices. The dispatchers then take the signed invoices to the accounts receivable office.

Ghulam Abbas and Stuart Weisfeld are co-owners of the Employer. Abbas is the president of the corporation, and Weisfeld is its vice president and secretary. Weisfeld and Abbas are the only corporate officers of the Employer. Weisfeld is also the corporation's operations manager, and he supervises the buyers while both he and Abbas supervise the sales representatives, the employees in accounts payable and receivable, and the Director of Human Resources, Lillian Gonzalez. Gonzalez supervises Laura Ramos, the head of customer service, who in turn supervises the customer service employees. Jose Ramos, the warehouse manager, supervises all drivers, warehouse employees, receivers, and dispatchers.

The Employer currently employs approximately 107 employees. These include: 1 accounts payable employee; 1 accounts receivable employee; 1 accounts assistant; 1 director of human resources; 30 full-time drivers; 6 part-time drivers; 37 warehouse employees; 5 receivers; 3 buyers; 2 dispatchers; 7 customer service employees; 11 full-time sales representatives; and 2 part-time sales representatives.

## **B. Job Classifications the Parties Agree Should be Included in the Unit**

### **1. Full-time Drivers**

The Employer employs approximately 30 full-time drivers who drive 20-foot bobtail trucks to pick up and deliver products. One full-time driver is based out of his Las Vegas, Nevada home. The parties have stipulated that the Las Vegas driver should be excluded from any unit found appropriate. Neither any special medical certification nor any license other than a normal driver's license is required to drive the Employers'

trucks. Drivers are paid hourly, and their wages range from \$9.00 to \$12.50 per hour. Drivers are the only employees who are required to wear uniforms: pants, shirt, and hat, although the Employer also requires warehouse employees to wear hats. The Employer provides each driver with 6 to 11 uniforms. The Employer requires drivers to know about the products they deliver and, thus, prefers to promote warehouse employees to the driver position. Approximately half of the current drivers are former warehouse employees.

When the driver arrives at the warehouse for his or her shift, the driver receives pick tickets from the warehouse employees or dispatchers and ascertains that all products to be delivered are on the truck. If all the necessary products are not on the truck, the driver can ask for assistance from warehouse employees, dispatchers, and receivers to fill the orders properly. The driver then pulls invoices from a dispatcher and leaves on the route. If the products to be delivered are not available at the warehouse, buyers or dispatchers will give the driver a purchase order to obtain the needed products from the Employer's suppliers or other sources such as retail stores. Drivers typically drive alone; however, when it is very busy, a warehouse employee will ride with the driver to assist with unloading products, although this is an infrequent occurrence. Dispatchers at times will meet a driver on the route to check on the stops and routes. At each stop on the route, drivers deliver products to customers and retain copies of customer-signed invoices. After finishing their route, drivers return to the warehouse, check in with receivers or dispatchers, and drop off their invoices with dispatchers. If drivers return to the warehouse with returned or undelivered products, receivers, dispatchers, and sometimes drivers unload the products. Drivers begin this process anew if they have more than one route for the day.

Drivers typically make an average of 10 stops on each route in the Los Angeles area. For longer routes to areas such as San Diego, Ventura, or Bakersfield, the average route is six stops. The Employer may send drivers to deliver products already in the warehouse or to obtain products from suppliers. Drivers work more than eight hours per day five or six times per week, and they generally work from 5:00 a.m. to 4:00 p.m. Long-distance drivers begin their workdays as early as midnight or 2:00 a.m., while some drivers known as short runners, who usually make quick local deliveries, may begin at 6:00 a.m., 9:00 a.m., or 10:00 a.m. In contrast with part-time drivers, full-time drivers usually do not work on Sundays. Drivers keep a log summary where they fill in their arrival and departure times at each stop and keep track of their 30-minute lunch break. The Employer has a GPS monitoring device on each truck that allows the Employer to pinpoint the location of the truck. The Employer, therefore, has the ability to compare the drivers' departure and arrival times—as well as driver-reported lunch times—at each delivery stop with the monitoring device output. However, the Employer's primary means of checking the location of drivers is direct communication with the drivers via the walkie-talkie function of cell phones. The Employer provides all drivers, and most employees, with cell phones where only the walkie-talkie function is enabled. The Employer provides common cell phones to drivers on longer routes where the walkie-talkie function does not work properly.

In addition to driving trucks, drivers perform other duties in the warehouse such as sorting products and helping to load and unload trucks. Drivers spend approximately one hour of each shift in the warehouse performing these non-driving duties. If drivers arrive at work early or have finished their routes, they may be asked to clean the warehouse or put away products, if necessary. Jose Ramos, the warehouse manager, supervises the drivers.

## 2. Warehouse Employees

The Employer employs approximately 37 warehouse employees. They are hourly employees whose wages range from \$7.00 to \$10.00 per hour, and more than half are non-English speakers. They work five or six days per week. The Employer pays for hats with the Employer's logo and requires the warehouse employees to wear them. A normal working day for warehouse employees begins between 9:00 p.m. and 11:00 p.m. and ends at 7:00 a.m.

Warehouse employees receive pick tickets from dispatchers, find the products to fill the orders, and load the products onto trucks. They also work with receivers to unload products and store them in the warehouse. They move trucks at the warehouse to put them in position to be loaded. They also participate, three or four warehouse employees at a time, in the daily taking of inventory of all warehouse products by physically counting boxes of products. Receivers and buyers are also involved in the inventory process. On an infrequent basis, warehouse employees ride with drivers in trucks to help unload products. Jose Ramos, the warehouse manager, supervises the warehouse employees.

## 3. Receivers

The Employer employs five receivers as hourly employees and pays them from \$8.00 to \$12.00 per hour. The first shift is from 9:00 p.m. or 10:00 p.m. to 5:00 a.m. or 6:00 a.m. The second shift is from 5:00 A.M to 1:00 p.m. or 2:00 p.m. Receivers meet the drivers when the latter arrive at the warehouse with trucks full of products, help unload the products, and store them in the warehouse. Receivers then take invoices from the drivers and give them to buyers. Receivers notify buyers whenever they discover a quality problem with any product. Jose Ramos, the warehouse manager, supervises receivers.

## 4. Pre-loaders, Sorters, and Forklift Drivers

The record is sparse regarding how many employees, if any, fall under the classifications of pre-loaders, sorters, and forklift drivers. Nevertheless, the Petitioner desires to include pre-loaders, sorters, and forklift drivers in any bargaining unit found appropriate, and the Employer does not object to their inclusion.

**C. Job Classifications Whose Inclusion in the Bargaining Unit Is In Dispute**

**1. Sales Representatives**

The Employer employs 11 full-time and 2 part-time sales representatives. The full-time sales representatives are paid a base salary of \$400 per week plus commission. The commissions range from \$600 to \$1,100 per week. Part-time sales representatives, who work for the Employer as well as other companies, are paid entirely on commission. The Employer pays a car and cell-phone allowance only to those sales representatives who meet certain sales targets. The Employer also provides all sales representatives with a computer terminal they can use from home to input and check orders. However, the Employer does not reimburse sales representatives for any home-phone use or equipment, such as faxes or copy machines that they may use for work purposes. Sales representatives wear no uniform and are free to wear whatever clothes they desire as long as they achieve results for the Employer. Sales representatives have no specific working hours and are not required to report to work at the warehouse. Depending on the customers' needs, they may spend the entire working day away from the warehouse. Some sales representatives are bilingual, but most of them are English-only speakers. Sales representatives, along with buyers, dispatchers, and Laura Ramos, the customer service supervisor, are the only employees who have business cards.

The sales representatives' job is to acquire new customers and ensure their satisfaction with the Employer and its products. After acquiring new customers, sales representatives can input the orders into the Employer's computer network via a home terminal the Employer provides. At the warehouse, sales representatives use the workstations of the customer service employees for paperwork and computer access. To satisfy customers' demands, sales representatives may take their personal vehicles to meet a driver at a stop on the route, unload the customer's desired products from the truck, load these products into his or her personal vehicle, and deliver the products to the customer. Sales representatives are also responsible for delivering products to customers after drivers have completed their work assignments for the day. To complete such deliveries, sales representatives on average pick up products from the warehouse three or four times per week. There is one sales representative, however, who is based in Palm Springs, California, and who picks up products from the warehouse only once per week. Furthermore, if the customer needs a product immediately that is unavailable at the warehouse, sales representatives buy and deliver the product to the customer. In these cases, sales representatives pay for the product with their own money, and dispatchers or Andy Paez, the warehouse employee in charge of maintaining warehouse equipment, reimburse them. When a driver delivers products to a new customer for the first time, sales representatives will meet the driver and customer at the stop to facilitate the first delivery. Sales representatives rarely—less than once per week—substitute for drivers on regular truck routes. Full-time sales representatives attend monthly sales meetings headed by Ghulam Abbas. The purpose of these meetings is to inform sales representatives and buyers about new products and computer issues. Sales

representatives, buyers, and Laura Ramos attend these meetings with Abbas. Abbas or Weisfeld supervises the sales representatives.

## 2. Customer Service Employees

The Employer employs six hourly customer service employees whose wages range from \$9.00 to \$12.00 per hour. They work on different shifts, either from 7:00 a.m. to 3:00 p.m. or 4:00 p.m. or from 4:00 p.m. to 12:00 a.m. or 1:00 a.m. Each customer service employee has a workstation surrounded by a low cubicle on the second floor of the warehouse. Each workstation has a telephone and computer terminal installed with the Employer's computer software. Customer service employees use the faxing room and the restroom on the second floor, and they also clock in and out by swiping their cards through the swiping device on the second floor. Customer service employees, other than Laura Ramos, do not have business cards.

Customer service employees take orders from customers via telephone, fax, and e-mail, input the orders into the computer system to generate pick tickets and invoices, and give the pick tickets and invoices to dispatchers. Customer service employees review customer orders with sales representatives, let dispatchers know how quickly orders must be filled and delivered, and work with buyers to access and update product price lists on the computer. If drivers encounter problems such as consistently delivering the wrong products to the wrong customers, drivers ask customer service employees for assistance. During emergencies when no drivers are available, customer service employees deliver products on the trucks to customers. On Sunday mornings, customer service employees work in the dispatch office on the first floor to perform the dispatch function. They begin at 9:00 a.m., check in the drivers by taking their invoices, and send the drivers out on their routes. Later in the day, customer service employees take customer calls from their workstations on the second floor. On Sundays, they also contact drivers to answer customer inquiries regarding time of delivery and tell drivers where to purchase products for delivery. Customer service employees respond to any problems that may arise on Sundays. Laura Ramos, the customer services supervisor, supervises customer service employees.

## 3. Dispatchers

As of the time of the hearing, the Employer employed two dispatchers, Ben Sierra and Leo Curiel, and paid them a salary of \$500 to \$700 per week. Their hours are generally from 9:00 p.m. to 5:00 a.m. or 6:00 a.m. and 3:00 or 3:30 p.m. to 11:30 a.m. Dispatchers have an office on the first floor. All dispatchers are bilingual. Human Resource Director Lillian Gonzalez testified that dispatchers cannot hire or fire employees or issue write-ups or warning letters. On the other hand, driver Victor Lopez testified that he had seen the signatures of Felipe Ayala, Leo Curiel, and Jose Ramos on warning notices. He also testified that he had heard Ben Sierra tell a loader that the loader would be fired if the loader did not perform certain duties. Dispatchers, like sales representatives, buyers, and Laura Ramos, have business cards.



Dispatchers receive pick tickets and invoices from customer service employees, create drivers' routes, and hand the pick tickets to warehouse employees to fill the orders. Dispatchers also consult with customer service employees about the time frames for the orders. If the ordered products are unavailable at the warehouse, dispatchers discuss with the buyers where to buy the products or obtain this information themselves if the buyers are unavailable. Dispatchers or buyers then give drivers a purchase order and send them to buy the products. If the ordered products are available at the warehouse, dispatchers or warehouse employees give the pick tickets to drivers. Dispatchers regularly load trucks on short runs and help load trucks on other occasions when time is short. Drivers check their trucks to match the products on the truck to the products on the pick ticket and return the pick ticket to dispatchers, who then hand the invoices to the drivers and send them on their routes. While drivers are on their routes, dispatchers contact them via walkie-talkie or cell phone to tell them where to pick up products unavailable at the warehouse, answer drivers' questions about the location of a customer stop, and change drivers' assignments from the original schedule. On the first delivery to new customers, dispatchers also contact drivers to inform them that sales representatives will meet them and the new customers at the stop. Dispatchers and receivers check in drivers except on Sundays, when customer service employees check in the drivers. At times, dispatchers meet drivers on their routes to see how drivers' routes and stops are working. Dispatchers substitute for drivers only during emergencies. Jose Ramos, the warehouse manager, supervises the dispatchers.

The Employer had three dispatchers until recently, but Felipe Ayala was terminated effective June 27, 2003. Felipe Ayala was a salaried dispatcher and supervisor until his termination. The parties stipulated that Ayala was a supervisor as defined in the Act. Ayala issued written disciplinary warnings to warehouse employees, drivers, and dispatchers, but Jose Ramos took any further action. Driver Victor Lopez testified that Ayala had issued him a disciplinary warning. Lopez witnessed Ayala's signature on other warning notices. Lopez also testified that he had to seek permission from Ayala to go to the second floor of the warehouse to see Human Resources Director Gonzalez. Gonzalez testified that employees are not prohibited in any way from seeing her on the second floor. Because Ayala began work at 9:00 a.m. and Jose Ramos begins at 8:30 p.m. or 11:00 p.m., their schedules only slightly overlapped. Therefore, Ayala used to spend a significant amount of time at the warehouse during which he was in charge as a result of Jose Ramos's absence. According to Gonzalez, Ayala had the same duties that Ben Sierra now has.

#### 4. Buyers

The Employer employs three buyers whose salaries range from \$700 to \$1,000 per week. They work 8 to 10 hours per day. Some begin work at 10:00 p.m. while others begin at 3:00 a.m. or 4:00 a.m. No training other than that of prior experience is required for the buyer position. One of the three buyers was promoted from a warehouse employee position. The other two had experience working in similar businesses before joining the Employer.

It is the buyers' responsibility to keep customers happy by providing the products they need. Buyers spend approximately half of their time in the warehouse to fulfill this responsibility. If a customer order cannot be filled at the warehouse, dispatchers tell buyers, and buyers must procure the products for the order. To obtain the necessary products, buyers provide drivers with purchase orders to buy products. Alternatively, buyers may go to the Employer's suppliers, personally buy products, and return to the warehouse or drop products off with drivers already on their routes. Warehouse employees usually inform buyers about any product quality problems. Additionally, buyers are involved in the inventory process and perform a physical count of inventory at the end of every month. During busy periods, buyers also receive products arriving at the warehouse.

Buyers are the main contacts between vendors and employers. During their decision-making process about which products to buy, buyers leave the warehouse and go to potential vendors' sites to inspect the quality of products offered. Buyers determine whether to buy free on board or through the wholesale market and are authorized to make credit purchases. The buyers together purchase, per day and five or six times per week, \$30,000 to \$40,000 worth of products. The three buyers make two-thirds of these purchases, while Weisfeld, as the lead buyer, makes one-third of them. Once a business relationship is established between the Employer and a vendor, buyers are authorized to end the relationship if they are unsatisfied with the vendor's products. Weisfeld supervises the buyers.

## 5. Part-time Drivers

The Employer employs six or seven part-time drivers and pays them the same wages as the full-time drivers. Part-time drivers also wear the same uniform, swipe the same time clock, and perform the same duties as full-time drivers. Unlike full-time drivers, part-time drivers work approximately 15 hours per week, usually on Sundays and another day of the week. Part-time drivers receive none of the benefits of the full-time employees. These benefits include health insurance, life insurance, paid holidays, and paid vacation days. All part-time drivers have full-time jobs at another company, G & G Produce, and work for the Employer on their days off from that job. No part-time drivers have become full-time drivers, and no full-time drivers have become part-time drivers. Full-time driver Lopez testified that he attended all mandatory meetings for drivers and that part-time drivers never attended these meetings. However Human Resources Director Gonzalez testified that she had held safety meetings for drivers attended by both full-time and part-time drivers. Jose Ramos, the warehouse manager, supervises all drivers, including part-time drivers.

**D. Employees the Petitioner Seeks to Exclude from the Bargaining Unit as Supervisory or Managerial Personnel**

1. Laura Ramos

Laura Ramos is the salaried supervisor of the customer service department and reports to Human Resources Director Gonzalez. As head of customer service, Ramos attends sales meetings with sales representatives, buyers, and Abbas to discuss computer issues. Ramos tells customer service employees when to take breaks. Although she has authority to issue warning notices to customer service employees, she does not have authority to terminate them. Ramos can, however, recommend termination to Gonzalez, and Gonzalez has terminated customer service employees based on Ramos's recommendation. Ramos, unlike the other customer service employees, receives business cards.

2. Andy Paez

Andy Paez is a multi-functional employee who is in charge of maintaining the warehouse. He also is a part-time sales representative who handles cash and occasionally performs the buyer's role by purchasing products. The Employer pays him a salary of \$500 to \$600 per week plus a commission of approximately \$400 or \$500 per week. Although Paez's hours vary in view of his sales representative duties, he works from 6:00 a.m. to 4:00 p.m. He has an office next to the buyers' office on the first floor of the warehouse. To maintain the warehouse, Paez contacts vendors and purchases supplies for the warehouse such as light bulbs and toilet paper. He is also responsible for any equipment inside the warehouse, including fork lifts, pallet jacks, balers, and refrigeration equipment. In the event such equipment needs repair or replacement and the Employer has maintenance contracts for the equipment, Paez contacts the appropriate vendors to fix the problem. If no contract applies, he solicits bids for repair or replacement and submits them to Weisfeld or Abbas for approval. Paez also receives invoices from vendors regarding purchases of various items from toilet paper to produce and processes the invoices through a computer to accounts payable.

Paez handles cash reimbursements. He receives between \$200 and \$400 per day from Jaspinder Singh, the accounts payable employee. Paez then reimburses drivers, sales representatives, or anyone else who purchased products with cash. Driver Victor Lopez testified that he would ask a dispatcher to reimburse him first, and only if the dispatcher did not have the money would Lopez approach Paez for reimbursement. Lopez also testified that although he had seen Paez work on the forklift and act as a receiver at the Employer's previous location, he had never seen Paez perform such work at the Employer's current warehouse location. Gonzalez, who stated that she walks through the warehouses several times per day, testified that she saw Paez in the warehouse rather than in his office 90% of the several times per day that she walks through the warehouse. Weisfeld or Abbas supervises Paez.

3. Rene Barajas

Rene Barajas is paid a salary of \$500 per week. Even though Barajas is listed as individual who works in the dispatch office, according to Employer Exhibit #7, the Employer considers him a warehouse employee who does not work much in the dispatch office. The record reflects that Barajas acts as a receiver, moves trucks in the warehouse, and helps with the forklifts. Barajas was a full-time driver with the Employer until he lost his driver's license and was transferred to the warehouse.

4. Manuel Pacheco

Manuel Pacheco is a salaried receiver who earns approximately \$556 per week. The record establishes that he is the only receiver on duty during the night shift and works no later than 6:00 a.m. Although all receivers have access to computers or terminals during the normal course of their work activities, Pacheco is the only receiver who uses the computers. The other receivers use manual input.

5. Carlos Mendez

Carlos Mendez is a salaried full-time driver who earns \$550 to \$600 per week, and also serves as a part-time sales representative on commission. After Mendez clocks out as a driver, he sells the Employer's products on his own time.

**E. Legal Analysis and Determination**

The parties dispute whether sales representatives, customer service employees, dispatchers, buyers, part-time drivers, and the following individuals—Laura Ramos, Andy Paez, Ben Sierra, Rene Barajas, Manuel Pacheco, and Carlos Mendez—should be included in the bargaining unit. I shall first discuss case law associated with appropriate unit determinations and then address each of the disputed classifications and individuals. In the interest of brevity, I refer to the petitioned-for unit of full-time drivers, warehouse employees, receivers, pre-loaders, sorters, and forklift drivers as “drivers and warehouse employees” in the following discussion.

1. Sales Representatives and Customer Service Employees Do Not Share a Community of Interest with Drivers and Warehouse Employees.

Section 9(b) of the Act provides that “the Board shall decide in each case whether, to assure to employees fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.” It is well established under Board law that the Act does not require the unit for bargaining be the optimum, or most appropriate unit, but only an appropriate unit. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Overnight Transportation Co.*, 322 NLRB 723 (1996). An appropriate unit insures to employees “the fullest freedom in exercising the rights guaranteed by the Act.” *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7<sup>th</sup> Cir. 1951);

*Dinah's Hotel and Apartments*, 295 NLRB 1100 (1989). A Petitioner is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1962). Furthermore, in *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971), the Board explained that when no other labor organization is seeking a unit larger or smaller than the unit requested by the petitioner, the sole issue to be determined is whether the unit requested by the petitioner is an appropriate unit. In addition, the Board will "consider a petitioner's desires relevant," although this will "not, however, obviate the need to show [a sufficient] community of interest on the facts of the specific case." See *Airco, Inc.*, 273 NLRB 348 fn. 1 (1984); *Marks Oxygen Co.*, 147 NLRB 228 (1964).

In determining whether a petitioned-for-unit is an appropriate unit, the Board addresses whether the employees share a community of interest. *Home Depot USA, Inc.*, 331 NLRB at 1290; *The Boeing Company*, 337 NLRB No. 24 (2001). In *Home Depot USA*, supra, at 1291, the Board stated that factors it considers in determining community of interest among different groups of employees include:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; differences in job functions and amount of working time spent away from the employment or plant sites...the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and history of bargaining [*Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)].

First, applying the community of interest factors, I find that sales representatives do not share a community of interest with drivers and warehouse employees. Unlike drivers and warehouse employees, sales representatives wear no uniforms and are supervised by the Employer's owners. Sales representatives spend most of their working time away from the warehouse seeking new customers. Unlike drivers and warehouse employees, they do not have set working hours and are not required to report to the warehouse for work. The few times that sales representatives do go to the warehouse, three or four times per week on average, they perform the sales functions: picking up products from the warehouse in their personal vehicles for delivery to demanding customers on a rush order or attending sales meetings with other sales representatives and the owners to learn about new products. Sales representatives also work from home with an employer-provided computer terminal. They are compensated with commissions for selling rather than driving or loading and unloading products. Although sales representatives do come in contact with drivers, the record indicates that such contacts—meeting the driver on the route to unload products from the driver's truck for faster delivery or meeting the driver and customer on a new account—occur infrequently.

Sales representatives earn substantially more than drivers and warehouse employees. While sales representatives earn a commission from \$600 to \$1,100 per week in addition to a \$400 base salary per week, drivers earn from \$360 to \$500 per

week, and warehouse employees earn from \$280 per week to \$400 per week. Thus, a sales representative who earns only a \$600 commission makes twice as much money per week as the highest-paid driver and more than five times as much money per week as the lowest-paid warehouse employee. As a result of the differences in job functions, the fact that wages are substantially determined by sales commissions, the hours of their work, the amount of time that they spend away from the warehouse, and the infrequency of contact with drivers and warehouse employees, I conclude that sales representatives do not share a community of interest with drivers or warehouse employees.

Second, applying the community of interest analysis to customer service employees, I find that they do not share a community of interest with drivers and warehouse employees to warrant their inclusion in the unit. The main function of customer service employees is to take calls from customers or sales representatives who are placing new orders and input these orders into the computer. The customer service employees then generate pick tickets and invoices and give them to dispatchers. Alternatively, dispatchers may generate the pick tickets and invoices themselves from their own computer terminal. Neither drivers nor warehouse employees input new orders into the computer or generate this paperwork. Unlike drivers and warehouse employees, customer service employees do not wear uniforms.

The contact between customer service employees and drivers or warehouse employees is minimal. For instance, the Employer has chosen to locate the customer service employees in the office area of the second floor of its facility rather than on the warehouse floor. The customer service employees swipe their timecards on a swiping device on the second floor, whereas drivers and warehouse employees swipe their timecards on a swiping device on the first floor. Customer service employees are thus segregated from drivers and warehouse employees, who do not venture to the second floor other than to ask the rare question about employment benefits to Gonzalez. The Employer has chosen to dedicate a specific “front office” supervisor, Laura Ramos, to oversee customer service employees. Laura Ramos, in turn, reports to Gonzalez. In contrast, drivers and warehouse employees are supervised by Jose Ramos, the warehouse manager. Although customer service employees do have limited contact with dispatchers, their contact with drivers and warehouse employees is limited to Sundays, when customer service employees substitute for dispatchers and check in drivers. Customer service employees are hourly employees whose wages are similar to drivers’ wages and are more than warehouse employees’ wages.

Based on the foregoing, I conclude that customer service employees do not share a community of interest with drivers and warehouse employees on the basis of customer service employees’ entirely different job function vis-à-vis drivers and warehouse employees; segregation on the second floor away from drivers and warehouse employees; lack of contact with drivers and warehouse employees; and a different line of supervision from drivers and warehouse employees.

2. Part-time Drivers Share a Community of Interest with Drivers and Warehouse Employees.

As a general rule, part-time employees are included in a unit with full-time employees whenever the part-time employees perform work within the unit on a regular basis for a sufficient period of time during each week or other appropriate calendar period to demonstrate that they have a substantial and continuing interest in the wages, hours, and working conditions of the full-time employees in the unit. These employees are often called regular part-time employees. *Fleming Foods*, 313 NLRB 948 (1994); *Pat's Blue Ribbons*, 286 NLRB 918 (1987); *Farmers Insurance Group*, 143 NLRB 240, 245 (1979). The test for whether an employee is a regular part-time employee or a casual employee takes into account factors such as regularity and continuity of employment and similarity of work duties. *Pat's Blue Ribbons*, supra. Other factors the Board considers include the similarity of wages and benefits and the common supervision of part-time employees. *Muncie Newspapers, Inc.*, 246 NLRB 1088 (1979); *Mensh Corp.*, 159 NLRB 156 (1966). If these factors are present, the fact that an employee has a full-time job somewhere else does not destroy the established community of interest with the full-time employees. *Tri-State Transportation Co.*, 289 NLRB 356 (1988); *V.I.P. Movers*, 232 NLRB 14 (1977).

The record establishes that each of the Employer's six or seven part-time drivers regularly works on Sundays and one other day of the week for an approximate total of 15 hours per week. Most of the part-time drivers work full-time at another company, G& G Produce, and work for the Employer on their days off from that job. Part-time drivers perform the same duties as full-time drivers, earn the same range of wages, and are supervised by the same person, Jose Ramos. Part-time drivers do not receive benefits afforded to full-time drivers such as health insurance; life insurance; and paid holidays, vacation days, and sick days. I conclude on the record before me that the Employer's part-time drivers share a community of interest with its full-time drivers. All part-time drivers who have worked an average of at least four hours per week during the quarter prior to the election eligibility date are eligible to vote. *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99 (2003) (citing *Davison-Paxon Co.*, 185 NLRB 21 (1970)).

3. Buyers Are Managerial Employees.

Managerial employees are persons in executive positions who have authority to formulate, determine, or effectuate employer policies with respect to employee relations matters or whom employees could reasonably believe have such authority. *North Arkansas Electric Cooperative*, 185 NLRB 550 (1970). Managerial employees formulate and effectuate management policies by expressing and making operative the decisions of their employer. Under the tests used by the Board and the Courts, managerial employees are those who exercise discretion within, or even independently of, established employer policy and are aligned with management. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). An employee is excluded as managerial only if that person represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Id.* at 682-683.

The purpose of excluding individuals as managerial personnel rests on the premise that the functions and interest of such individuals are more closely allied with those of management rather than production workers, and they are not “employees” within the meaning of the Act. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). An employee does not acquire managerial status by making some decisions or exercising judgment within established limits set by higher management. In *Case Corp.*, 304 NLRB 939 (1991), for instance, the Board found industrial engineers were not managerial employees, even though they participated in grievance handling and bargaining, where the record failed to show that they had extensive authority to make employer policy.

Managerial employees are “. . . ‘much higher in the managerial structure’ than those explicitly mentioned by Congress which ‘regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary.’” *NLRB v. Yeshiva University*, supra at 682. Although the Board has established no firm criteria for determining when an employee is so aligned, normally employees may be excluded as managerial only if they represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Sutter Community Hospital of Sacramento*, 227 NLRB 181, 193 (1976); *General Dynamics Corp.*, 213 NLRB 851 (1974); *Convair Aerospace Div.*, 213 NLRB 851, 857 (1974); *Bell Aerospace*, supra at 274, 286-289. The Board has defined “managerial employees as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer’s established policy.” *General Dynamics*, supra at 857.

An employee’s job title does not determine managerial status; rather, it is an employee’s actual job responsibilities, authority, and relationship to management that determines the status. *Bell Aerospace*, supra at 290 fn.19. Nor do employees acquire managerial status by making decisions or exercising discretion “within established limits.” *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971). Therefore, employees whose discretion and latitude for independent action take place within the confines of the employer’s general directions are not managerial employees. *Bell Aerospace*, supra at 288 fn.16.

Based on the record before me, I find that buyers are managerial employees. In reaching this conclusion, I rely on several factors. Buyers exercise discretion within or independently of the Employer’s established policy when they purchase products for the Employer’s customers. Buyers’ main responsibility is to keep the Employer’s customers happy by providing them with the products they ordered, and buyers have complete discretion to select and purchase these products. Buyers go to vendors’ places of business to inspect the quality of their products. Buyers may personally purchase products from vendors or instruct drivers to do so. Buyers are authorized to make credit purchases for the Employer and decide whether to buy free on board or through the wholesale market. They also initiate contacts with new vendors and change vendors unilaterally. The three buyers—not including Mr. Weisfeld, the lead buyer—purchase a



total of approximately \$23,000 worth of products per day. In a similar fact pattern, the Board found that a buyer was a managerial employee where the buyer had authority to initiate and end contacts with suppliers, complete discretion with respect to price and delivery, and the ability to purchase products without approval or review of his actions. *Simplex Industries, Inc.*, 243 NLRB 111, 112-13 (1979). The Employer has charged buyers with purchasing products that will attract and retain customers, and buyers exercise total discretion to accomplish this. Therefore, I find that the Employer's three buyers are managerial employees, and I shall exclude them from the unit.

4. Dispatchers are Statutory Supervisors.

Section 2(11) of the Act defines the term "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

The possession of any one of these authorities is sufficient to deem the employee invested with such authority as a supervisor. *Allen Services Co.*, 314 NLRB 1060 (1994); *Big Rivers Electric Corp.*, 266 NLRB 380, 382 (1983). Persons with the power "effectively to recommend" the actions described in Section 2(11) are supervisors within the statutory definition. *Sun Refining & Marketing Co.*, 301 NLRB 642, 649-650 (1991); *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972). The burden of proving supervisory status is on the party that alleges that it exists. *St. Francis Medical Center West*, 323 NLRB 1046 (1997). Thus, I find that the burden of establishing supervisory status lies with the Petitioner.

Dispatchers are statutory supervisors because they issue discipline, direct drivers' actions through the use of independent judgment, and substitute for supervisors. The Employer currently employs two dispatchers: Ben Sierra and Leo Curiel. Although the Employer asserts that neither of them has the authority to issue discipline, the record reflects that the signatures of Curiel, former dispatcher and stipulated supervisor Felipe Ayala, and Jose Ramos appear on warning notices. The record also reflects that Sierra told a loader that he would be fired if he did not perform certain duties. While the parties stipulated, and I find, that Ayala is a supervisor, I also note that the Employer admits that Sierra performs the same duties that Ayala used to perform and that Sierra is in charge of the warehouse on the two days, Friday and Saturday, when Jose Ramos does not work. Curiel also works on Friday and Saturday. The record further reflects that Jose Ramos told drivers at a meeting that if he could not be contacted, drivers should contact Sierra, Ayala, Curiel, and Rene Barajas in that order. Dispatchers also use independent judgment to decide which among hundreds of possible stops each driver will make on a daily basis, whether a particular driver will have a short or long runs, and whether to call drivers and change their routes or assignments. Based on the record before me, I find that

dispatchers are statutory supervisors, and therefore, should be excluded from the unit found appropriate herein.

5. The Disputed Individuals

In making the determinations that follow, I note the Board's judgment that it will not lightly exclude employees from the protection of the Act. *E.M. Bailey Distributing Co.*, 228 NLRB 1400 (1977). "The Board has a duty not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect." *Chevron Shipping Co.*, 317 NLRB 379 (1995) (quoting *Chicago Metallic Corp.*, 273 NLRB 1677 (1985)).

a. Manuel Pacheco

Pacheco is a salaried receiver who works the night shift and uses the Employer's computers. This evidence is insufficient to sustain the Petitioner's burden of establishing that Pacheco possesses either supervisory or managerial-employee status. Accordingly, I find that Pacheco is neither a statutory supervisor nor a managerial employee and should be included in the unit found appropriate herein.

b. Rene Barajas

Barajas is a salaried warehouse employee who was a full-time driver until he lost his driver's license and transferred to the warehouse. Barajas receives drivers, moves trucks in the warehouse, and helps with forklifts. I find, based on lack of any evidence, that Barajas is neither a statutory supervisor nor a managerial employee and appears to share a community of interest with other warehouse employees. Accordingly, I find that he should be included in the unit found appropriate herein.

c. Laura Ramos

Laura Ramos is the only person in customer service to receive a salary and business cards. She tells customer service employees when to take breaks; issues warning notices to customer service employees; and effectively recommends termination. Although Ramos cannot terminate any employees herself, Human Resources Director Gonzalez has terminated customer service employees based on Ramos' recommendation. Ramos also sits in with Gonzalez during the hiring process. Based on the indicia set forth above, Ramos is a statutory supervisor and, thus, should be excluded from the unit found appropriate herein. *Sun Refining & Marketing Co.*, supra at 649-650.

d. Andy Paez

Dual-function employees are employees who perform more than one function for the same employer. The Board summarized its analysis of dual-function employees in *Martin Enterprises*, 325 NLRB 714 (1998):

[d]ual-function employees, employees who perform more than one function for the same employer, may vote even though they spend less than a majority of their time on unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit. *Continental Cablevision*, 298 NLRB 973 (1990); *Alpha School Bus Co.*, 287 NLRB 698 (1987); *Oxford Chemicals*, 286 NLRB 187 (1987). [E]mployees devoting less than 50 percent of their time to unit work may have sufficient interest in the terms and conditions of employment to warrant their inclusion in the unit. *Avco Corp.*, 308 NLRB 1045 (1992); *Berea Publishing Co.*, 140 NLRB 516 (1963).

In determining whether dual-function employees regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in the unit's working conditions, the Board has no bright line rule as to the amount of time required to be spent performing unit work. Rather, the Board examines the facts in each particular case. See, e.g., *Oxford Chemicals*, supra (employee who regularly performed unit work for 25 percent of each working day was included in the unit); *Davis Transport*, 169 NLRB 557, 562-563 (1968) (employees who spent less than 3 percent of their time performing unit work during 10-month period were not included in the unit).

Once an employee is determined regularly to perform a substantial amount of unit work, it is inappropriate to consider other aspects of the dual-function employee's terms and conditions of employment in a second-tier community-of-interest analysis. See *Oxford Chemicals*, supra (the Board, in determining that the dual-function employee was eligible to vote, overruled the administrative law judge's finding that the dual-function employee was ineligible based on four factors, including the employee's different hourly wage rate and insurance benefits, that the employee also performed clerical functions, and that the employee's work was less physically demanding than other unit employees). The Board has recognized that even though dual-function employees may, in a particular case, possess less of a community of interest than other unit employees, "voter eligibility and unit placement do not turn only on maximizing homogeneity among unit employees." *Avco Corp.*, supra.

Andy Paez is allowed to vote subject to challenge because the record does not show whether or to what extent Paez performs unit work. Although it is clear that Paez replaces warehouse equipment and reimburses drivers and other employees for their cash purchases, there is conflicting evidence whether Paez performs receiving work, and if so, how often. Gonzalez testified that she walks through the warehouse several times per day and sees Paez in the warehouse rather than in his office 90% of the time. In contrast, driver Victor Lopez testified that he has never seen Paez perform any receiving work at the current warehouse—where the Employer has been located since December 2002—although Lopez had seen Paez perform such work at the previous warehouse. Because I do not consider Paez's warehouse-maintenance or cash-reimbursement duties to be duties

similar to those performed by drivers or warehouse employees, the extent of Paez's receiving work, if any, will determine whether he has a substantial interest in the unit's working conditions to be included in the unit. On the record before me, therefore, I direct that Paez be allowed to vote subject to challenge.

In reaching this determination, I reject the Petitioner's contention that Paez is a statutory supervisor or a managerial employee. Paez observes when warehouse equipment fails and arranges for repair or replacement of such equipment. If there is a repair contract in place, he contacts the appropriate vendors. If no repair contract applies, Paez solicits bids and submits them to Weisfeld or Abbas for approval. Paez does not have discretion to approve any bids or sign any contracts. The record also demonstrates that he does not direct other employees' actions, recommend hiring or firing of employees, or in any way supervise anyone. The fact that employees who need reimbursement may seek it first from dispatchers, and seek it from Paez only if the dispatchers have run out of cash, does not diminish the ministerial nature of Paez's cash-disbursement duties. I therefore find that he is neither a statutory supervisor nor a managerial employee.

d. Carlos Mendez

Carlos Mendez is full-time driver who receives a salary for his driving duties. He also works as a sales representative on his own time and earns commissions for such sales. Mendes, as a full-time driver, regularly performs a substantial amount of unit work. There is no evidence in the record that he is a statutory supervisor or a managerial employee. Based on the foregoing and applying the standards set forth for dual-function employees, I find that Mendez regularly performs driver unit work and should, therefore, be included in the unit found appropriate herein.

Based upon the above facts and analysis, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time drivers, warehouse employees, receivers, pre-loaders, sorters, and forklift drivers employed by the Employer at and out of its Los Angeles facility.

**EXCLUDED:** All other employees, office clerical employees, sales representatives, customer service employees, buyers, dispatchers, the Las Vegas driver, professional employees, guards, and supervisors as defined in the Act.

There are approximately 80 employees in the unit found appropriate.

The unit found appropriate is different than that sought by the Petitioner, although the record is clear that Petitioner is willing to proceed to an election with an alternative unit. Inasmuch as I am directing an election in a unit broader than the unit sought by the Petitioner, if it so desires, the Petitioner may withdraw its petition, without prejudice,

upon written notice to the undersigned within ten (10) days from the date of this Decision and Direction of Election. If, however, the Petitioner chooses to proceed to an election on the basis of the broader unit found appropriate herein, it must, to the extent it has not already done so, submit to me within 14 days from the date of this Decision and Direction of Election evidence of an adequate showing of interest in the broader unit, or the petition will be dismissed.

### **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off; employees who have been, and continue to be, engaged in an economic strike for less than 12 months before the election date and who retained the status as such during the eligibility period, and their replacements; and those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; or if they have engaged in an economic strike for more than 12 months before the election date and have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**FOOD, INDUSTRIAL AND BEVERAGE WAREHOUSE, DRIVERS AND  
CLERICAL EMPLOYEES, LOCAL 630, affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND  
HELPERS OF AMERICA, AFL-CIO**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the Regional Director for Region 21, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). This list may initially be used by the Regional Director for Region 21 in determining an adequate showing of interest. The Regional Director for Region 21 shall make the list available to all parties to the election when the Regional Director for Region 21 shall have determined

that an adequate showing of interest among the employees in the unit found appropriate has been established. In order to be timely filed, such list must be received in the NLRB Region 21 Office, 888 South Figueroa Street, 9<sup>th</sup> Floor, Los Angeles, California 90017-5449, on or before August 8, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by August 15, 2003. A copy of the request for review should also be served on the Regional Director of Region 21 and the undersigned.

**DATED** at Phoenix, Arizona, this 1<sup>st</sup> day of August 2003.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Acting Regional Director  
National Labor Relations Board-Region 21<sup>3</sup>

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<sup>3</sup> Pursuant to OM 03-77, Interregional Assistance in R Case Matters, this case transferred to the Regional Director for Region 28 for the purpose of writing the decision in this matter.